And again, in Sec. 635 of the same work, considering the question of the sale, the author says:

"A pledgee cannot directly or indirectly purchase at a sale of the pledge under a power, unless it is specially provided by the terms of the power that he may do so. Nothing passes by the form of a sale, and the pledgee still holds the property, under his original lien as collateral security. *The title is still in the pledgor* and the pledgee is still liable to account for the property and to deliver it upon payment of the debt."

Smith's right in the notes and mortgages, even had they been pledged to him, would have been a lien thereon, which would have been enforced by the sale of the collaterals under the power contained in the collateral note. But at that sale, even if made by Smith, the purchaser would not have derived title to the notes and trust deeds from Smith, who would have sold them merely in the enforcement of his lien, as the agent or attorney in fact for the real owner. He would not be selling *his interest* in the notes and trust deeds, which would merely substitute the purchaser in his position as pledgee or lienor. He would be selling the interest of the owner. He would not sell the interest of Stade, because Stade had no interest. He would sell the interest which Stade was enabled to pledge by his possession of the securities, which was the interest of Kolze. So that at such a sale appellee would have purchased the interest of Kolze.

Stade and Smith, in any construction of the facts of this case, are not in the transaction as owners of the notes and trust deeds or as assignors, because the title never passed through them. In legal effect, appellee derived the notes directly from Kolze, to all intents and purposes as though she had met him face to face and

purchased the securities from him by paying cash therefor.

THIRD. Appellee urges that under the circumstances of the case and appellants' delay in objecting to the jurisdiction, it is a hardship to compel the appellee to pay the costs of the litigation, and the costs should be taxed against appellants.

And, for the reasons aforesaid, appellee petitions for a rehearing.

Respectfully submitted,

HERMAN W. STILLMAN,

Solicitor and of Counsel for Appellee.

I, the undersigned, solicitor and of counsel for the appellee, do hereby certify that in my opinion the foregoing petition for rehearing is well founded in point of law, and is not made for the purpose of delay.

HERMAN W. STILLMAN,

Solicitor and of Counsel for Appellee.